

AMENDED IN ASSEMBLY JANUARY 23, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Bradford

January 4, 2012

An act to amend Section 11166 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as amended, Bradford. Child abuse reporting.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law specifies that any other person may, but is not required to, report a known or suspected instance of child abuse or neglect to any police department, sheriff's department, or to specified other entities.

This bill would require any person to report to a peace officer a known or suspected instance of a child being the victim of sexual abuse, and would make a failure to report punishable by imprisonment in a county jail for a period of 6 months or a fine of up to \$1,000, or by both that imprisonment and fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11166 of the Penal Code is amended to
2 read:

3 11166. (a) Except as provided in subdivision (d), and in
4 Section 11166.05, a mandated reporter shall make a report to an
5 agency specified in Section 11165.9 whenever the mandated
6 reporter, in his or her professional capacity or within the scope of
7 his or her employment, has knowledge of or observes a child whom
8 the mandated reporter knows or reasonably suspects has been the
9 victim of child abuse or neglect. The mandated reporter shall make
10 an initial report to the agency immediately or as soon as is
11 practicably possible by telephone and the mandated reporter shall
12 prepare and send, fax, or electronically transmit a written followup
13 report thereof within 36 hours of receiving the information
14 concerning the incident. The mandated reporter may include with
15 the report any nonprivileged documentary evidence the mandated
16 reporter possesses relating to the incident.

17 (1) For purposes of this article, “reasonable suspicion” means
18 that it is objectively reasonable for a person to entertain a suspicion,
19 based upon facts that could cause a reasonable person in a like
20 position, drawing, when appropriate, on his or her training and
21 experience, to suspect child abuse or neglect. “Reasonable
22 suspicion” does not require certainty that child abuse or neglect
23 has occurred nor does it require a specific medical indication of
24 child abuse or neglect; any “reasonable suspicion” is sufficient.
25 For the purpose of this article, the pregnancy of a minor does not,
26 in and of itself, constitute a basis for a reasonable suspicion of
27 sexual abuse.

28 (2) The agency shall be notified and a report shall be prepared
29 and sent, faxed, or electronically transmitted even if the child has
30 expired, regardless of whether or not the possible abuse was a

1 factor contributing to the death, and even if suspected child abuse
2 was discovered during an autopsy.

3 (3) Any report made by a mandated reporter pursuant to this
4 section shall be known as a mandated report.

5 (b) If after reasonable efforts a mandated reporter is unable to
6 submit an initial report by telephone, he or she shall immediately
7 or as soon as is practicably possible, by fax or electronic
8 transmission, make a one-time automated written report on the
9 form prescribed by the Department of Justice, and shall also be
10 available to respond to a telephone followup call by the agency
11 with which he or she filed the report. A mandated reporter who
12 files a one-time automated written report because he or she was
13 unable to submit an initial report by telephone is not required to
14 submit a written followup report.

15 (1) The one-time automated written report form prescribed by
16 the Department of Justice shall be clearly identifiable so that it is
17 not mistaken for a standard written followup report. In addition,
18 the automated one-time report shall contain a section that allows
19 the mandated reporter to state the reason the initial telephone call
20 was not able to be completed. The reason for the submission of
21 the one-time automated written report in lieu of the procedure
22 prescribed in subdivision (a) shall be captured in the Child Welfare
23 Services/Case Management System (CWS/CMS). The department
24 shall work with stakeholders to modify reporting forms and the
25 CWS/CMS as is necessary to accommodate the changes enacted
26 by these provisions.

27 (2) This subdivision shall not become operative until the
28 CWS/CMS is updated to capture the information prescribed in this
29 subdivision.

30 (3) This subdivision shall become inoperative three years after
31 this subdivision becomes operative or on January 1, 2009,
32 whichever occurs first.

33 (4) On the inoperative date of these provisions, a report shall
34 be submitted to the counties and the Legislature by the Department
35 of Social Services that reflects the data collected from automated
36 one-time reports indicating the reasons stated as to why the
37 automated one-time report was filed in lieu of the initial telephone
38 report.

39 (5) Nothing in this section shall supersede the requirement that
40 a mandated reporter first attempt to make a report via telephone,

1 or that agencies specified in Section 11165.9 accept reports from
2 mandated reporters and other persons as required.

3 (c) Any mandated reporter who fails to report an incident of
4 known or reasonably suspected child abuse or neglect as required
5 by this section is guilty of a misdemeanor punishable by up to six
6 months confinement in a county jail or by a fine of one thousand
7 dollars (\$1,000) or by both that imprisonment and fine. If a
8 mandated reporter intentionally conceals his or her failure to report
9 an incident known by the mandated reporter to be abuse or severe
10 neglect under this section, the failure to report is a continuing
11 offense until an agency specified in Section 11165.9 discovers the
12 offense.

13 (d) (1) A clergy member who acquires knowledge or a
14 reasonable suspicion of child abuse or neglect during a penitential
15 communication is not subject to subdivision (a). For the purposes
16 of this subdivision, “penitential communication” means a
17 communication, intended to be in confidence, including, but not
18 limited to, a sacramental confession, made to a clergy member
19 who, in the course of the discipline or practice of his or her church,
20 denomination, or organization, is authorized or accustomed to hear
21 those communications, and under the discipline, tenets, customs,
22 or practices of his or her church, denomination, or organization,
23 has a duty to keep those communications secret.

24 (2) Nothing in this subdivision shall be construed to modify or
25 limit a clergy member’s duty to report known or suspected child
26 abuse or neglect when the clergy member is acting in some other
27 capacity that would otherwise make the clergy member a mandated
28 reporter.

29 (3) (A) On or before January 1, 2004, a clergy member or any
30 custodian of records for the clergy member may report to an agency
31 specified in Section 11165.9 that the clergy member or any
32 custodian of records for the clergy member, prior to January 1,
33 1997, in his or her professional capacity or within the scope of his
34 or her employment, other than during a penitential communication,
35 acquired knowledge or had a reasonable suspicion that a child had
36 been the victim of sexual abuse that the clergy member or any
37 custodian of records for the clergy member did not previously
38 report the abuse to an agency specified in Section 11165.9. The
39 provisions of Section 11172 shall apply to all reports made pursuant
40 to this paragraph.

1 (B) This paragraph shall apply even if the victim of the known
2 or suspected abuse has reached the age of majority by the time the
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction
5 to investigate any report of child abuse made pursuant to this
6 paragraph even if the report is made after the victim has reached
7 the age of majority.

8 (e) Any commercial film and photographic print processor who
9 has knowledge of or observes, within the scope of his or her
10 professional capacity or employment, any film, photograph,
11 videotape, negative, or slide depicting a child under the age of 16
12 years engaged in an act of sexual conduct, shall report the instance
13 of suspected child abuse to the law enforcement agency having
14 jurisdiction over the case immediately, or as soon as practicably
15 possible, by telephone and shall prepare and send, fax, or
16 electronically transmit a written report of it with a copy of the film,
17 photograph, videotape, negative, or slide attached within 36 hours
18 of receiving the information concerning the incident. As used in
19 this subdivision, "sexual conduct" means any of the following:

20 (1) Sexual intercourse, including genital-genital, oral-genital,
21 anal-genital, or oral-anal, whether between persons of the same or
22 opposite sex or between humans and animals.

23 (2) Penetration of the vagina or rectum by any object.

24 (3) Masturbation for the purpose of sexual stimulation of the
25 viewer.

26 (4) Sadomasochistic abuse for the purpose of sexual stimulation
27 of the viewer.

28 (5) Exhibition of the genitals, ~~public~~ *pubic*, or rectal areas of
29 any person for the purpose of sexual stimulation of the viewer.

30 (f) Any mandated reporter who knows or reasonably suspects
31 that the home or institution in which a child resides is unsuitable
32 for the child because of abuse or neglect of the child shall bring
33 the condition to the attention of the agency to which, and at the
34 same time as, he or she makes a report of the abuse or neglect
35 pursuant to subdivision (a).

36 (g) (1) Any other person who has knowledge of or observes a
37 child whom he or she knows or reasonably suspects has been a
38 victim of child abuse or neglect, except as described in paragraph
39 (2), may report the known or suspected instance of child abuse or
40 neglect to an agency specified in Section 11165.9.

(2) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of sexual abuse shall report the known or suspected instance of sexual abuse to a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2. Any person who fails to report an incident of known or reasonably suspected sexual abuse as required by this paragraph is guilty of a misdemeanor, punishable by up to six months imprisonment in a county jail or by a fine of one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) For purposes of this section, “any other person” includes a mandated reporter who acts in his or her private capacity and not in his or her professional capacity or within the scope of his or her employment.

(h) When two or more persons, who are required to report, jointly have knowledge of a known or suspected instance of child abuse or neglect, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(i) (1) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with this article.

(2) The internal procedures shall not require any employee required to make reports pursuant to this article to disclose his or her identity to the employer.

(3) Reporting the information regarding a case of possible child abuse or neglect to an employer, supervisor, school principal, school counselor, coworker, or other person shall not be a substitute for making a mandated report to an agency specified in Section 11165.9.

(j) A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having

1 jurisdiction over the case, to the agency given the responsibility
2 for investigation of cases under Section 300 of the Welfare and
3 Institutions Code, and to the district attorney's office every known
4 or suspected instance of child abuse or neglect, as defined in
5 Section 11165.6, except acts or omissions coming within
6 subdivision (b) of Section 11165.2, or reports made pursuant to
7 Section 11165.13 based on risk to a child which relates solely to
8 the inability of the parent to provide the child with regular care
9 due to the parent's substance abuse, which shall be reported only
10 to the county welfare or probation department. A county probation
11 or welfare department also shall send, fax, or electronically transmit
12 a written report thereof within 36 hours of receiving the information
13 concerning the incident to any agency to which it makes a
14 telephone report under this subdivision.

15 (k) A law enforcement agency shall immediately, or as soon as
16 practicably possible, report by telephone, fax, or electronic
17 transmission to the agency given responsibility for investigation
18 of cases under Section 300 of the Welfare and Institutions Code
19 and to the district attorney's office every known or suspected
20 instance of child abuse or neglect reported to it, except acts or
21 omissions coming within subdivision (b) of Section 11165.2, which
22 shall be reported only to the county welfare or probation
23 department. A law enforcement agency shall report to the county
24 welfare or probation department every known or suspected instance
25 of child abuse or neglect reported to it which is alleged to have
26 occurred as a result of the action of a person responsible for the
27 child's welfare, or as the result of the failure of a person responsible
28 for the child's welfare to adequately protect the minor from abuse
29 when the person responsible for the child's welfare knew or
30 reasonably should have known that the minor was in danger of
31 abuse. A law enforcement agency also shall send, fax, or
32 electronically transmit a written report thereof within 36 hours of
33 receiving the information concerning the incident to any agency
34 to which it makes a telephone report under this subdivision.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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